APPELLATE COURT

Chris Cornelius,
Appellant,

Docket # 07-AC-020

v.

Date: June 20, 2008

Oneida Police Department,
Interim Chief Rich Van Boxtel,
Sgt. Daniel House,
Respondents.

FINAL DECISION

This case has come before the Oneida Tribal Judicial System, Appellate Court. Judicial Officers Janice L. McLester, Anita F. Barber, Lois Powless, Winnifred L. Thomas and Jennifer Webster presiding.

I. Background

Appellant, Chris Cornelius, a former Oneida Police Officer, filed an appeal of the Oneida Police Commission's decision to uphold her termination of January 28, 2007. We find the Police Commission's decision to uphold Appellant's termination from employment meets the just cause standard as stated in Sec. 37.9-7 of the Oneida Law Enforcement Ordinance. Therefore, we affirm the Oneida Police Commission's decision.

A. Jurisdiction

This case comes before this Appellate body as an appeal from an original hearing body, the Oneida Police Commission (OPC). Any person aggrieved by a final decision in a contested case can seek Oneida Tribal Judicial System review under Sec. 1.11-1 of the Oneida Administrative Procedures Act. In addition, the Oneida Law Enforcement Ordinance, Chapter 37, permits officers to appeal disciplinary actions to the Oneida Appeals Commission under Sec. 37.9-9. Ms. Cornelius has timely filed an appeal. Therefore, jurisdiction is properly with the Oneida Tribal Judicial System, Appellate Court.

B. Factual Background

This case arises out of a single incident which occurred on January 23, 2007. Deputy William Schommer, of the Outagamie County Sheriff's Department, received information that Ruben Bautista-Sebastian, subject to a want or warrant, was at Ms. Cornelius' residence. Mr. Bautista-Sebastian was Ms. Cornelius' fiancé. Deputy Schommer had been given a physical description of Mr. Bautista-Sebastian's car. Upon arrival at Ms. Cornelius' residence, Deputy Schommer noticed a blue Ford Festiva in the driveway, matching the physical description of Mr. Bautista-Sebastian's car.[2] Deputy Schommer confirmed Mr. Bautista-Sebastian was wanted on a warrant. Deputy Schommer approached the residence and Ms. Cornelius answered the door. Deputy Schommer confirmed Ms. Cornelius was a law enforcement officer. Deputy Schommer then asked Ms. Cornelius if she knew the location of Mr. Bautista-Sebastian. Ms. Cornelius stated he was at work even though he was in fact inside at her residence.

A brief conversation ensued between Ms. Cornelius and Deputy Schommer. Deputy Schommer asked several questions of Ms. Cornelius regarding Mr. Bautista-Sebastian and his whereabouts. Ms. Cornelius denied Mr. Bautista-Sebastian's presence at the residence. According to Deputy Schommer she repeatedly lied. In Ms. Cornelius' view, "Within the course of this conversation a few minutes, I corrected my own error." Eventually Ms. Cornelius conceded Mr. Bautista-Sebastian was at the residence. Mr. Bautista-Sebastian came to the front door and was peacefully taken into custody.

Just prior to this incident, Ms. Cornelius had contacted Brown County Circuit Court regarding Mr. Bautista-Sebastian's warrant. It turned out Mr. Bautista-Sebastian had missed court because the Court had an incorrect address for Mr. Bautista-Sebastian. As a result of Ms. Cornelius' assistance, the judge's office re-scheduled the Court date, the warrant remained in effect.

[2] Officer Schommer claims he ran the plates and the car owner came back as Mr. Bautista-Sebastian's brother. The legal owner of the car is in dispute and was the subject of conflicting testimony. Ms. Cornelius provided documentation the car is registered to Mr. Bautista-Sebastian's brother. Even assuming this is true, it doesn't influence our decision or undermine the legitimacy of Deputy Schommer's inquiry. Deputy Schommer had a physical description of the car which matched the car in the driveway.

After the encounter at Ms. Cornelius' residence on January 23, 2007, Deputy Schommer contacted Ms. Cornelius' supervisor Sgt. Daniel House, and advised Sgt. House that Ms. Cornelius had not been truthful about Mr. Bautista-Sebastian's location. Sgt. House began his investigation into the alleged violations of departmental rules or regulations by interviewing the deputies involved who were Deputy Schommer, Outagamie Deputy Bart Barrington and Oneida officer William Cone. Officers Barrington and Cone had also been dispatched to Ms. Cornelius' residence to assist Deputy Schommer on January 23, 2007, but arrived after Mr. Bautista-Sebastian had been taken into custody. Sgt. House also obtained written statements from the deputies. In addition, Sgt. House met with Ms. Cornelius and obtained her written statement about the incident.

At the conclusion of his investigation, Sgt. House concluded Ms. Cornelius had violated Oneida Police Department Rules and Regulations, Standard Operating Procedures and Code of Conduct. Sgt. House determined the violations were serious enough to warrant Ms. Cornelius' termination from employment.

On January 28, 2007, Ms. Cornelius was terminated from the Oneida Police Department for violations of the Oneida Police Department Internal Affairs Standard Operating Procedures: § 2.2 Serious Misconduct Complaint, Rules and Regulations Standard Operating Procedures: §§ 4.3.11, 4.3.25, 4.5.13, 5.1, 5.18, 5.28, and violation of Law Enforcement Code of Ethics.

Ms. Cornelius then appealed her termination to Interim Chief of Police, Rich Van Boxtel, who upheld the termination. On March 28, 2007 Ms. Cornelius appealed to the Oneida Police Commission. On August 27, 2007 the Oneida Police Commission issued their decision upholding the termination. On September 10, 2007, Ms. Cornelius timely appealed the Oneida Police Commission's decision to the Appellate Court.

C. Relevant law

The relevant law at issue is § 37.9-7 of the Oneida Law Enforcement Ordinance:

> Just Cause Standard Applied to Commission Deliberations. The Commissioners shall base their decisions regarding a disciplinary action upon the "just cause" standard.

(a) Whether the law enforcement officer could reasonably be expected to have had knowledge of the probable consequences of the alleged misconduct.
(b) Whether the procedure the law enforcement officer allegedly violated is reasonable.
(c) Whether the Police Chief, before filing charges against the law enforcement officer, made a reasonable effort to discover whether the law enforcement officer did, in fact, violate a procedure.
(d) Whether the investigation was fair and objective.
(e) Whether the Police Chief discovered substantial evidence that the law enforcement officer violated the procedure as described in the charges filed against the law enforcement officer.
(f) Whether the Police Chief is applying the rule of order fairly and without discrimination against the law enforcement officer.
(g) Whether the proposed discipline is reasonable as it relates to the seriousness of the alleged violation and to the law enforcement officer's record of service with the Oneida Police Department.

D. Positions of the Parties

Ms. Cornelius alleges the OPC abused its discretion in finding evidence of just cause to terminate pursuant to the Just Cause Standard as outlined in the Law Enforcement Ordinance, § 37.9-7.

Ms. Cornelius alleges 1) she was denied due process of law as afforded her by the Oneida Constitution, Article VI-Bill of Rights, 2) that the OPC decision is clearly erroneous and against the weight of the evidence, and 3) that the OPC decision is arbitrary and capricious.

Interim Chief Van Boxtel and the Oneida Police Department (OPD) assert Ms. Cornelius' conduct of obstructing another police officer by lying is sufficient justification for termination of employment. Interim Chief Van Boxtel and the OPD contend Ms. Cornelius received due process and was not treated differently from other officers.

II. Issues

Was Ms. Cornelius denied due process of law as afforded her by the Oneida Constitution, Article VI-Bill of Rights?

Is the decision of the Oneida Personnel Commission clearly erroneous and against the weight of the evidence?

Is the decision of the Oneida Police Commission arbitrary and capricious?

III. Analysis

Was Ms. Cornelius denied due process of law as afforded her by the Oneida Constitution, Article VI-Bill of Rights?

Ms. Cornelius received the process she was due. The Oneida Constitution and Law Enforcement Ordinance provide certain due process protections to Ms. Cornelius. Article VI of the Oneida Constitution states:

> All members of the tribe shall be accorded equal opportunities to participate in the economic resources and activities of the tribe. All members of the tribe may enjoy, without hindrance, freedom of worship, conscience, speech, press, assembly, association and due process of law, as guaranteed by the Constitution of the United States.

The rights for accused law enforcement officers are found in Chapter 37, Oneida Nation Law Enforcement Ordinance, § 37.9-4:

> Rights of the Accused Law Enforcement Officer at Hearings:
> (a) Notice of charges that have been made, or will be made, as well as actions that will or may be taken against the individual.
> (b) The right to a hearing to respond to the charges.
> (c) The right to representation at the individual's expense.
> (d) The right to confront and cross-examine his/her accusers.
> (e) The right to present evidence and argue his/her view of the facts.

We find Ms. Cornelius received due process. She was provided with an opportunity to give her side of the story prior to her employment being terminated. Her supervisor, Sgt. House, met with her and interviewed several other witnesses. Post-termination, the requirements of the Law Enforcement Ordinance were met. Ms. Cornelius received a hearing and had notice of the charges. The hearing was on the record and Ms. Cornelius was represented and was able to confront and cross-examine her accusers.

Despite receiving due process, Ms. Cornelius asserts she was denied the right to counsel during the time Sgt. House investigated her conduct. The Law Enforcement Ordinance does not provide

a right to counsel for a law enforcement officer who is not subject to criminal charges. Ms. Cornelius was never charged criminally nor did the issue of criminal charges ever arise within the Oneida Police Department.[3] See also, Garrity v. New Jersey, 385 U.S. 483 (1967)(Court held that an employee has no Sixth Amendment right to counsel where an interview does not serve criminal prosecution.)

Is the decision of the Oneida Police Commission clearly erroneous and against the weight of the evidence?

We have carefully reviewed the evidence and the applicable law in this case. We vote to uphold the OPC decision. The decision to uphold the decision largely rests on the fact that Ms. Cornelius, a law enforcement officer sworn to uphold the law, lied to another police officer in order to conceal the location of her fiancé who had an outstanding warrant. Under any view of the facts and the law, such conduct merits termination. Those assigned to enforce and uphold the law lose the privilege to do so when they violate law.

As an overall approach, we apply an arbitrary and capricious standard of review to the OPC decision. Under the arbitrary and capricious standard, a reviewing court must consider whether an original hearing body's decision was based on consideration of relevant facts and evidence and whether there had been a clear error of judgment. The court may reverse only when the original hearing body offers a decision so implausible that it could not be attributed to the evidence and facts presented. Thus, the scope of review under arbitrary and capricious standard is narrow, and a court may not substitute its judgment for that of the original hearing body. Oneida Bingo & Casino v. Parker, 10 O.N.R. 3-97, 04-AC-012 (10/22/2004).

The OPC is a finder of fact. Unless the Police Commission made a clear error of judgment, this Appellate Court cannot overturn their decision. We are not persuaded the OPC decision failed to reach a reasonable conclusion based on the Just Cause Standard of the Oneida Law Enforcement

[3] Outagamie County Deputy Schommer stated to Ms. Cornelius during the incident that he would not move forward with an obstruction charge if Ms. Cornelius produced Mr. Bautista-Sebastian, which she eventually did. Officer Schommer explained he did not press for charges as he wanted to keep his word to Ms. Cornelius. It is a crime under Wisconsin law to obstruct a law enforcement officer. Wis. Stat. § 946.41.

Ordinance, Chapter 37. The decision of the OPC was reasoned and based on facts and evidence presented for their review.

The key issue in this case is whether the Police Commission correctly applied the just cause standard in reviewing Ms. Cornelius' termination from employment. Under the Law Enforcement Ordinance it states:

> 37.9-7. **Just Cause Standard Applied to Commission Deliberations.** The Commissioners shall base their decisions regarding a disciplinary action upon the "just cause" standard.
> (a) Whether the law enforcement officer could reasonably be expected to have had knowledge of the probable consequences of the alleged misconduct.
> (b) Whether the procedure the law enforcement officer allegedly violated is reasonable.
> (c) Whether the Police Chief, before filing charges against the law enforcement officer, made a reasonable effort to discover whether the law enforcement officer did, in fact, violate a procedure.
> (d) Whether the investigation was fair and objective.
> (e) Whether the Police Chief discovered substantial evidence that the law enforcement officer violated the procedure as described in the charges filed against the law enforcement officer.
> (f) Whether the Police Chief is applying the rule or order fairly and without discrimination against the law enforcement officer.
> (g) Whether the proposed discipline is reasonable as it relates to the seriousness of the alleged violation and to the law enforcement officer's record of service with the Oneida Police Department.

The dissenting opinion focuses only on the last two factors. Those two address the non-discriminatory application of the rules and the reasonableness of the proposed discipline as it relates to the seriousness of the violation. While we acknowledge the dissent's concern with the severity of the discipline issued, we find termination is a reasonable discipline for lying to a police officer. Furthermore, the evidence in the record shows the Police Department acted without discrimination.

Even if these two factors count in Appellant's favor, the other five factors weigh heavily in favor of the Police Department and support termination from employment.

We review the seven factors listed in Sec. 37.9-7.

A. Whether the law enforcement officer could reasonably be expected to have had knowledge of the probable consequences of the alleged misconduct.

This factor weighs in favor of the Oneida Police Department. Ms. Cornelius admitted she knew that lying to a police officer is misconduct. She stated that in the course of her work as a law enforcement officer she had dealt with suspects who had lied to her.

Ms. Cornelius testified that when she saw Deputy Schommer's car in her driveway, she had a bad feeling she was going to lose her job. She felt this before she knew the reason for Deputy Schommer's visit. Her statement shows that Ms. Cornelius *knew* it was wrong to even be associating with Mr. Bautista-Sebastian, much less lying about his whereabouts. Ms. Cornelius had no reason to fear for her job without even knowing the nature of Deputy Schommer's visit—unless she was doing something she wasn't supposed to be doing.

There can be little argument Ms. Cornelius knew lying to a police officer violates several Oneida Police Department rules and is a violation of Wis. Stat. § 946.41, which makes it a crime to obstruct a law enforcement officer.

B. Whether the procedure the law enforcement officer allegedly violated is reasonable.

This factor weighs in favor of the Oneida Police Department. It is reasonable for the Police Department to expect its officers to be truthful, especially when dealing with officers from outside agencies.

Ms. Cornelius argues the procedures are not reasonable because they were not approved by the Human Resources Department (HRD) and therefore, by implication, were not valid or effective as applied to her. This argument is without merit.

Ms. Cornelius' argument is based upon the faulty assumption that the procedures require HRD approval before they are effective. However, the Law Enforcement Ordinance specifically exempts disciplinary actions against law enforcement officers from the Oneida Blue Book. Sec. 37.9-1(a). Furthermore, even if the Blue Book did apply, by its own terms it does not require HRD approval for department policies.

Sec. VII A. of the Blue Book states enterprises and programs may establish internal rules and regulations to facilitate the administration of Tribal Personnel Polices and Procedures. This section only requires that the internal rules not conflict with the Blue Book and that a copy is filed with HRD. Both of those requirements have been met. There is no stated requirement for HRD approval. Therefore, the internal Police Department rules under which Ms. Cornelius was disciplined were and are valid.

C. Whether the Police Chief, before filing charges against the law enforcement officer, made a reasonable effort to discover whether the law enforcement officer did, in fact, violate a procedure.

This factor weighs in favor of the Oneida Police Department. The Interim Police Chief and Ms. Cornelius' supervisor, Sergeant House, investigated the matter. Ms. Cornelius admitted she lied to Officer Schommer. There is no question Ms. Cornelius violated several department rules and Wisconsin law when she denied her fiancé was at her residence.

Sgt. House began his investigation into the alleged violations after Deputy Schommer brought to his attention Ms. Cornelius had initially lied to him stating Mr. Bautista-Sebastian was not at her residence. These allegations were substantiated by oral and written testimony by Deputy Schommer, Oneida Police Officer William Cone and by Ms. Cornelius. Testimony confirmed Ms. Cornelius knowingly interfered with Deputy Schommer in the exercise of his duties in attempting to detain an individual who was the subject of a warrant.

D. Whether the investigation was fair and objective.

There is no allegation the investigation was not fair and objective. Ms. Cornelius admitted she lied and admitted it was wrong. There is no dispute about the facts of the case.

E. Whether the Police Chief discovered substantial evidence that the law enforcement officer violated the procedure as described in the charges filed against the law enforcement officer.

This factor weighs in favor of the Oneida Police Department. There is substantial evidence Ms. Cornelius violated department rules and Wisconsin law when she lied to Officer Schommer. The evidence is well-established and uncontested that Ms. Cornelius violated several department

rules. For each of the department rules, the Police Commission found there was evidence in the record to support a violation. Below is a list of the Department rules violated by Ms. Cornelius.

- 4.3.11 Failure to provide accurate and complete information where such information is required by an authorized person;
- 4.3.25 Failure to exercise proper judgment;
- 4.5 Departmental Violations: Violations of departmental procedures and directives including but not limited to the following different types of charges that officers are liable for disciplinary actions;
- 5.1 Unbecoming Conduct: Officers will conduct themselves at all times, both on and off duty, so as not to reflect disfavor on the Department. Conduct unbecoming an officer shall include that which brings the Department into disrepute or reflects discredit upon the officer as a member of the Department, or that which impairs the operation of efficiency of the Department or officer;
- 5.18 Associations: Officers shall not have regular or continuous associations with persons whom they know, or should know, are the subject on an ongoing criminal investigation or pending criminal charges, or have been previously convicted of a crime, except as necessary in the performance of official duties, or where unavoidable because of other familial relationships of the officer;
- 5.28 Intervention: Officers shall not interfere with cases being handled by other officers of the Department or by any other government agency unless ordered to intervene by a superior officer, or the intervening officer believes beyond a reasonable doubt that manifest injustice would result from failure to take immediate action. Officers shall not undertake any investigation or other official action not part of their regular duties without obtaining permission from their supervisor unless the urgency of the situation require immediate police action.

For each of the Department rules listed above, there was testimony from Officer Schommer, Chief Van Boxtel, Sergeant House and Ms. Cornelius herself to support a violation.

F. Whether the Police Chief is applying the rule or order fairly and without discrimination against the law enforcement officer.

Ms. Cornelius and the dissent place great weight on an incident in 2006 where, in contrast to Ms. Cornelius' situation, Blaine Denny was permitted to participate in a golf outing with Oneida police officers despite being the subject of an apprehension request from the Green Bay Police Department. Ms. Cornelius infers the different treatment was due to Ms. Cornelius being a woman while Blaine Denny is male and the golf outing involved all male officers. The dissent illogically uses the 2006 incident to justify reinstatement of Ms. Cornelius. While the golf outing incident could have been handled better, there are important factual differences between it and Ms. Cornelius' situation.

The most important difference is that Ms. Cornelius lied to another police officer. At the golf outing no one concealed the fact Mr. Denny was the subject of an apprehension request. In addition, Mr. Denny was a former police officer who was wanted to appear as a witness in a case for the state. Unlike Ms. Cornelius' fiancé, he was not the subject of a warrant issued from the bench of a judge. An apprehension request is issued by an agency wishing to apprehend a certain individual. Testimony at the hearing suggested that Mr. Denny was wanted in custody for his own protection as he was a key witness in a drug trial commencing the week after the golf outing, far different circumstances from Mr. Bautista-Sebastian's.

At the moment Officer Schommer came to Ms. Cornelius' door and asked her whether Mr. Bautista-Sebastian was there, Ms. Cornelius had a decision to make. She could have told the truth or lied. She chose to lie. That fact places her conduct in a different category than the golf outing incident where no one is accused of lying. Had she told the truth and still been terminated from employment, we would be inclined to view her case more favorably. However, the two situations are different enough to justify Ms. Cornelius' termination.

Even if the 2006 incident and Ms. Cornelius' situation were the same (which we've shown they were not), if it was wrong in 2006, it is wrong today. Ms. Cornelius' misconduct and lying are not wiped away because something wrong may have happened in 2006.

In addition to the fact Ms. Cornelius lied, she was aware for nearly a month that there was a warrant for Mr. Bautista-Sebastian's arrest. She checked the warrant status herself three (3)

separate times, and yet continued not only to associate with a wanted individual, but failed in her sworn duties by not detaining Mr. Bautista-Sebastian. She failed again in her sworn duties by lying to an officer about Mr. Bautista-Sebastian being present in her house *(violations 5.1 and 5.28 indicated above).*

G. Whether the proposed discipline is reasonable as it relates to the seriousness of the alleged violation and to the law enforcement officer's record of service with the Oneida Police Department.

The dissenting decision downplays the seriousness of Ms. Cornelius' conduct while focusing on her record of service. While Ms. Cornelius' record of service is admirable, her misconduct was very serious. Telling the truth is at the foundation of our system of justice. Individuals are routinely prosecuted for lying. (The most recent notable example being the Chief of Staff to the Vice President of the United States. See United States v. Libby, Cr. No. 05-394 (Dist. Of Columbia)).

When a police officer breaks the law, the response should be swift and clear: such conduct will not be tolerated. The Oneida Police Department acted reasonably when it ended Ms. Cornelius' employment.

In addition to punishing misconduct, disciplinary action also serves as a deterrent from a specific act for all employees. The Oneida Police Department Officers, sworn to protect and uphold the law, are one of the most visible departments within the Tribe and should have the highest work ethic and integrity. While the termination may in itself seem severe, it was a decision that was made by Ms. Cornelius' supervisor, Sgt. Daniel House, after investigation and which was upheld by the Interim Chief of Police, Rich Van Boxtel, and the Police Commission.

The disciplinary action was within their authority and discretion. By affirming the decision we are avoiding placing ourselves in the role of Chris Cornelius' supervisor. Case precedent establishes that it is the supervisor's discretion to determine a suitable discipline for any departmental infraction or violation:

> A court cannot simply place itself in the supervisor's role and judge what it would have weighed or factored had the court been the supervisor. Instead, the court

> must weigh and judge the decision of the supervisor against legal rights, responsibilities, and application of facts and laws.

Oneida Division of Land Management v. Bluebird, 9 O.N.R. 3-14, 02-AC-027 (02/06/2003).

We respect the supervisor's role today by affirming the decision.

Is the decision of the Oneida Police Commission arbitrary and capricious?

No it was not. Under the arbitrary and capricious standard, a reviewing court must consider whether an original hearing body's decision was based on consideration of relevant facts and evidence and whether there had been a clear error of judgment. The court may reverse only when the original hearing body offers a decision so implausible that it could not be attributed to the evidence and facts presented. Thus, the scope of review under arbitrary and capricious standard is narrow, and a court may not substitute its judgment for that of the original hearing body. Oneida Bingo & Casino v. Parker, 10 O.N.R. 3-97, 04-AC-012 (10/22/2004).

IV. Decision

We uphold the decision of the Oneida Police Commission of termination.

DISSENTING OPINION

Docket No. 07-AC-020

Chris Cornelius, v. Oneida Police Department, Interim Chief Van Boxtel, Sgt. Dan House.

Judicial Officers Winnifred Thomas and Anita Barber respectfully dissent from the majority opinion based on the following analysis of issues presented.

We have carefully reviewed the evidence and we disagree with the majority's analysis of the merits of the case. We respectfully dissent.

While we disagree with the majority's analysis of just cause, we concur with the majority's analysis of the due process issue. Ms. Cornelius' due process rights were not violated. Therefore, in dissent we only address the just cause issue.

Is the decision of the Oneida Police Commission clearly erroneous and against the weight of the evidence?

While Ms. Cornelius' due process rights were not violated, the Oneida Police Commission's decision was clearly erroneous and against the weight of the evidence. The Police Commission's clear error was in its misapplication of the just cause factors found in Sec. 37.9-7. Specifically, the requirements of Sec. 37.9-7(f) and (g) which state:

> (f) Whether the Police Chief is applying the rule of order fairly and without discrimination against the law enforcement officer.
>
> (g) Whether the proposed discipline is reasonable as it relates to the seriousness of the alleged violation and to the law enforcement officer's record of service with the Oneida Police Department.

While it is true Ms. Cornelius withheld information from a law enforcement officer, given the language of Secs. 37.9-7(f) and (g), it was clearly erroneous and against the weight of the evidence to terminate Ms. Cornelius' employment given all the facts and circumstances surrounding the incident.

We readily acknowledge Ms. Cornelius committed a serious lapse in judgment for which she should be disciplined. She withheld information from a law enforcement officer about the

whereabouts of a person who was the subject of a warrant. However, the totality of the circumstances does not justify termination.

There are several factors which mitigate Ms. Cornelius' conduct: 1) The Department did not apply its rules without discrimination against Ms. Cornelius; 2) Ms. Cornelius' untruthful statement was outside of work and related to her fiancé; and 3) The discipline was not reasonable in relation to the seriousness of the violation and Ms. Cornelius' excellent record of service.

A. Discriminatory application

Under Sec. 37.9-7(f) a factor of the just cause determination is whether the Police Chief is applying the rule or order without discrimination. Various department rules were cited against Ms. Cornelius. We find their application was discriminatory. The evidence for this is found in the way similar incidents were handled involving other Oneida law enforcement officers.

One such incident occurred in 2006 when Sergeant Mark Stanchik arrived at a golf outing with a man named Blaine Denny. Mr. Denny was wanted on an apprehension request from the Green Bay Police Department. An apprehension request is not the same thing as a warrant issued by a judge, but law enforcement officers are nevertheless required to apprehend and render a person subject to such a request to the requesting agency.

As soon as Sergeant Stanchik became aware of the apprehension request for Mr. Denny, he telephoned the issuing agency, the Green Bay Police Department. He talked to a lieutenant who told him Mr. Denny could come to jail after the golf outing was concluded. Before the golf outing started, several individuals became aware of Mr. Denny's presence and the fact that he may be subject to an apprehension request. Several individuals asked Sergeant Stanchik about Mr. Denny and Sergeant Stanchik stated he had taken care of it and that Mr. Denny was not the subject of a warrant but merely an apprehension request.

Interim Chief Rich Van Boxtel was also at the golf outing and eventually the issue came to his attention. Interim Chief Van Boxtel decided it would not be the "correct thing to do" to call the Brown County Sheriff's Department and remove Mr. Denny from "that setting." Mr. Denny completed the golf outing in the presence of other law enforcement officers and then reported to

the Green Bay Police Department. No disciplinary action was taken against Sergeant Stanchik nor was any investigation conducted after the incident.

Contrast the events involving Sergeant Stanchik and Mr. Denny with those of Ms. Cornelius and her fiancé Ruben Bautista-Sebastian. Ms. Bautista-Sebastian was wanted on a bench warrant for missing a victim-witness impact meeting. Ms. Cornelius called the Judge's office where the warrant had been issued. It turned out Mr. Bautista-Sebastian had missed court because the Court had an incorrect address for Mr. Bautista-Sebastian. The judge's office re-scheduled the Court date without incident.

Nevertheless, the Oneida Police Department received a tip or complaint on or about January 23, 2007 that Mr. Bautista-Sebastian and Ms. Cornelius were together at Ms. Cornelius' residence. Rather than call Ms. Cornelius or handle the matter informally, the OPD requested the Outagamie County Sheriff's Department to respond to the situation. Three officers were dispatched to Ms. Cornelius' residence.

Sergeant Stanchik and Ms. Cornelius' situations were substantially similar up to a point. Both are Oneida law enforcement officers; both were with a person wanted by the law for relatively benign reasons (neither Mr. Denny nor Mr. Bautista-Sebastian could be described as hardened criminals on the run); both made phone calls to the appropriate agency to address the matter. However, when each situation came to light, they were handled quite differently.

In Mr. Denny's case, there was no investigation but an informal inquiry directed to Mr. Stanchik. On Mr. Stanchik's word alone that he had "taken care of the matter" no further action was taken. Interim Chief Van Boxtel stated it wouldn't be the "correct thing to do" to remove Mr. Denny from the "setting" of a golf outing. Chief Van Boxtel explained that the golf outing was to raise money for a memorial fund for a fallen police officer. Nevertheless, we find his statements somewhat incredible in light of what eventually happened to Ms. Cornelius.

Why is the golf course setting more protective of a person subject to an apprehension request than Ms. Cornelius' home? How is it not "the correct thing to do" to apprehend a person who is wanted by a law enforcement agency? Chief Van Boxtel's statement could be defended if Ms.

Cornelius had been given the same benefit. In both circumstances, Sergeant Stanchik and Ms. Cornelius had called the relevant authorities to make arrangements.

If a wanted individual can be permitted to finish a round of golf, surely Ms. Cornelius could be spared her job.

The contrast is stark. Sergeant Stanchik's issue was handled informally. However, as soon as the OPD received word that Mr. Bautista-Sebastian may be at Ms. Cornelius' residence, an outside agency was called and three squad cars were dispatched. There is no informal inquiry; no talking to Ms. Cornelius, no taking Ms. Cornelius' word for it.

In addition to the golf course incident, an incident with Oneida Lieutenant Ronald King was not even investigated despite his association with a convicted criminal. Lieutenant King shared an address with an individual convicted of possession of THC. This would appear to violate Sec. 5.18 of the OPD's Rules of Conduct which prohibits Oneida law enforcement officers from associating with persons who are the subject of an ongoing criminal investigation or pending criminal charges or have been previously convicted of a crime.[4] Lt. King was questioned at the hearing about his girlfriend's son living at Lt. King's address while the son's name appeared on a drug tip sheet and while he was later on probation. Like Ms. Cornelius, Lt. King was at the same address as a convicted criminal. Yet unlike Ms. Cornelius, who received three squad cars as a response, Lt. King was not investigated by the Oneida Police Department.

Both Sgt. Stanchik and Lt. King engaged in conduct similar to Ms. Cornelius'. Yet both men were the subject of little or no investigation and did not receive so much as a verbal warning. Yet Ms. Cornelius' employment was terminated. The comparison of these three events confirms discriminatory application of the rules.

[4] Sec. 5.18 makes an exception for officers who may have unavoidable associations due to "familial relationships." There was some discussion at the hearing that the individual involved was Lt. King's stepson. However, Lt. King clarified that he was not married to the individual's mother, that she was only his girlfriend and therefore the individual was not a family member. We point this out because while Lt. King arguably had a family-like relationship with the individual, Ms. Cornelius should receive a similar benefit as Mr. Bautista-Sebastian was her fiancé.

Finally, there were several other smaller incidents that, when taken together, contribute to an employment climate unfriendly towards Ms. Cornelius. Many of the items on this list may have other explanations and were not rebutted by the Respondents, but they influenced our decision so we include them here:

- Upon her return to work from a long layoff, rather than assign her to a regular work schedule, Appellant was assigned to a Field Training Officer for a refresher course in police work. The Field Training Officer stated he was instructed not to fill out evaluation paper work for the refresher course.
- Upon her return from the layoff, her squad car did not have a radar gun and had a carbon monoxide leak. When she brought the leak to the attention of a superior, she was told to roll down her window.
- Ms. Cornelius' picture was left off a display at the Department while all other officers' pictures were included. (Ms. Cornelius concedes she was not available for a photo but pointed out that at the very least her name could have been acknowledged with an explanation that no photo was available.)
- When Ms. Cornelius went to complain about the lack of a photo, then-Sgt. VanBoxtel began discussing details of his vasectomy operation. Despite Ms. Cornelius' objections directly to Sgt. VanBoxtel, he continued to discuss his procedure.
- When Ms. Cornelius raised Sgt. VanBoxtel's behavior with Lt. King, he directed her to take it up directly with Sgt. VanBoxtel despite OPD procedures which state a complaint should go up the chain of command.

B. Ms. Cornelius' statement was outside of work and involved her fiancé.

Although Ms. Cornelius was untruthful with Deputy Schommer, several facts mitigate the seriousness of her offense. Mr. Bautista-Sebastian was Ms. Cornelius' fiancé. She had a strong emotional bond to this person. It is understandable why her first instinct would be to protect such a person. Only minutes after her misstep, she handled the matter properly and produced Mr. Bautista-Sebastian.

Furthermore, the incident happened while Ms. Cornelius was at home and involved a non-work issue. It is not as though Ms. Cornelius lied to protect her own misconduct, violated the public

trust or lied about something involving a defendant or pending case. She had a lapse in judgment about someone to whom she was close.

C. The termination was not reasonable given the seriousness of the violation and the officer's record of service.

Ms. Cornelius' violation did not warrant termination from employment given its seriousness and her excellent record of service to the Oneida Police Department. As shown by the two examples with other officers, associating with criminals or wanted individuals is not consistently treated by the Oneida Police Department as a serious offense. Furthermore, Ms. Cornelius quickly corrected her mistake and admitted it later. Her conduct minimized the seriousness of the violation.

In addition, Ms. Cornelius has an excellent record of service with the OPD. Ms. Cornelius has worked for the OPD since 2000. Her employment record with the OPD is unblemished. During her tenure she was assigned to the Brown County Drug Task Force where she performed with distinction.

The record contains numerous instances of recognition of Ms. Cornelius' excellent police work:

- On June 19, 2002, the Director of the Brown County Drug Task Force specifically acknowledged Ms. Cornelius by name for her work on drug arrests and noted that she distinguished herself as an undercover agent.
- On July 9, 2002, officials from the State of Wisconsin Dept. of Justice cited Ms. Cornelius for valuable input in the Brown County Drug Task Force which led to several successful prosecutions. The officials noted Ms. Cornelius was enthusiastic and zealous in performing her duties. The letter concluded, "[w]ithout her efforts the case would've not turned out the way it did."
- In September 2002, a Brown County Lieutenant wrote to Oneida Lt. King that Ms. Cornelius was an "excellent officer" and that she is "in demand" to perform undercover operations for other agencies. One of her cases resulted in the seizure of cocaine, currency and over 1,300 pounds of marijuana. The letter closes by describing Ms. Cornelius as "an invaluable asset."

These glowing reports from individuals and agencies outside of the Tribe illustrate Ms. Cornelius' excellent record of service and weigh heavily against termination of employment.

Is the decision of the Oneida Police Commission arbitrary and capricious?
For reasons similar to those above, we find the Oneida Police Commission's decision was arbitrary and capricious when it sustained Ms. Cornelius' termination from employment.

We find a suspension is in order. Termination, the ultimate employment penalty, was too harsh. The decision was a misapplication of the just cause factors and a clear error in judgment given the mitigating circumstances and the treatment of similar situations with other officers.

CONCURRING DISSENT
Judicial Officer Anita Barber:

This has been a very difficult case, mainly because it has to do with ethics and standards. In applying both to this case, it appears there is a miscarriage of justice in regards to Officer Cornelius. There are several facts considered in this case that leave me with questions regarding the code of the Oneida Police Department and their standards. I have several thoughts about this case and many questions not answered to my satisfaction. I cannot come to a reasonable conclusion that would seem fair and just. At this time, I concur with Judge Thomas in the dissent with the following additional views.

In my opinion, there is something unethical when a previous officer can attend a golf outing with other officers knowing there is an apprehension request on that officer. The police officers knew about the apprehension request, but how many civilians knew? If the civilians knew, was there an agreement to allow the previous officer to continue playing? Why would they not want him picked up at the golf game if it was not serious? Is this a form of lying? If yes, would this act be more detrimental to public trust then one officer lying to another?

In the case of Officer Cornelius: Is it a standard for one officer to lie to another? Is it a standard for officers to lie to get what they want? If yes, then why discipline for it? This may sound like

a ridiculous question but I do not have police training to make that determination, nor do I have the documentation that would explain when it is appropriate for an officer lie.

The next question: Is it a standard for Officers lie to the public to get what they want to solve a case? If the answer yes then was Officer Cornelius being treated as a civilian when being questioned by a non-Oneida Police Officer? If yes, then why be disciplined as an Officer?

Why did Oneida call an officer from outside of the Oneida Police Department to investigate a report? Is this standard practice for all Oneida officers? I am told there are no answers for these questions but I am hoping a standard of fairness and equality will be considered when taking disciplinary actions in the future.